HON'BLE MR. JUSTICE BILAL NAZKI
HON'BLE MR. JUSTICE C.V.RAMULU
AND
HON'BLE MR. JUSTICE D. APPA RAO

WP NOs. 13382 of 2006, 13661 of 2002, 14599 of 2004, 6370 of 2001 and 21345 of 2001

Date: 28.12.2006

W.PNo. 13382 of 2006 & batch

Between:

The Congregation of the sisters of St. Anns of Providence, Door Nos. 12-10-27, Convent Street, Vijaywada rep. By its in-charge Sister: Sabina

…Petitioner

and

The Commissioner, Vijayawada Municipal Corporation, Vijayawada

…Respondent

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COMMON ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

Heard learned counsel for the parties. In these writ petitions the notices issued by the respondents under the Hyderabad Municipal Corporation Act, 1955 levying of tax have been challenged on various grounds. When these

matters came up before a Division Bench, it thought it proper to refer to a larger bench and in that, they have come before this Court.

The contention of the petitioners is that in terms of Section 202 (1) (bb) of the Hyderabad Municipalities Act, 1955 (for short "the Act") the petitioners' institutions are exempt from tax as they are educational institutions; whereas the contention of the respondents is that all educational institutions are not exempt under Section 202 (1) (bb) of the Act. Section 202 of the Act deals with general tax on premises to be levied and it lays down that the general tax shall be levied in respect of all buildings and lands in the city. However, there are certain exemptions and one of the exemptions which is relevant for the purpose of this case is sub-section (bb) of Section 202 which reads as under,

> "educational institutions upto 10th class, the buildings, of which are donated by charitable institutions or philanthropists, or which are depending on the grant-in-aid by the Government for the maintenance and such other educational institutions which are not running purely on commercial lines, but serving the cause of primary education which the Government may consider from time to time."

The only difference of opinion between the petitioners and the respondents is whether all the conditions laid down under sub-section (bb) of Section

202 of the Act are to be satisfied by an institution before it qualifies for exemption or only some of the conditions are to be complied with. When the Division Bench referred the matter to the Full Bench, it took note of a judgment of this Court in *Dayanand Bhavan Samithi Vs. The Commissioner, Municipal Corportion of Hydeabad, Hyderabad Division* [1]. A paragraph from that judgment was reproduced and we are again reproducing the same paragraph,

> "A perusal of the above clauses of sub-section (1) of Section 202 makes it clear that whereas exemption under clauses (a) and (b) in respect of the buildings mentioned therein is automatic, the exemption granted under clause (bb) and other clauses is subject to fulfillment of certain conditions mentioned therein. Here we are concerned with clause (bb) which was inserted by Andhra Pradesh Act 20 of 1989 with effect from 1.11.1990 by deleting the words 'or educational' from clause (b) of sub-section (1) of Section 202. A plain reading of clause (bb) discloses that General tax cannot be levied on (i) the building occupied and used by the educational institution; (ii) the buildings which are donated by charitable institutions or philanthropists; (iii) the educational institutions which are depending on the grant-in-aid by the Government for the maintenance; and (iv) other educational institutions which are not running purely on commercial lines, but serving the cause of primary education which the Government may consider from time to

> time. Thus the petitioner can get exemption under the said provision only when the above said conditions are satisfied. Whether the petitioner satisfies those conditions or not has to be examined by the respondent. Against such determination by the respondent, the petitioner has also a right of appeal."

In that case, this was not the issue as to whether all the conditions or only one or few conditions under sub-section (bb) of Section 202 of the Act are to be satisfied. Bare reading of the section is clear that exemption is available to only those institutions which are imparting education upto 10th class. This is a basic condition which has to be satisfied by all the institutions. Besides satisfying this condition, one of the other three conditions has also to be satisfied. Those three conditions are (i) that the buildings, of which are donated by charitable institutions or philanthropists, (ii) that educational institutions which are depending on the grant-in-aid by the Government for the maintenance and (iii) that other educational institutions which are not running purely on commercial lines, but serving the cause of primary education. It is not possible for any institution to satisfy all the three conditions. Therefore, the legislature put the word "or" after the first condition while connecting it to another condition. Therefore, in our view, the reference can be answered in the following terms,

That those educational institutions which are imparting education upto 10th class and satisfy at least one condition out of the three conditions mentioned hereinabove, would qualify for exemption.

It is submitted that there are other issues, therefore the matters be placed before the concerned Division Bench.

BNJ

CVRJ

DARJ

Dt. 28.12.2006

N.B:
Registry to place copies of this order in each bundle.
(B/o)
KR

[1] 1997 (1) An.W.R. 436 (DB)